

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**S.H., Appellant**

**and**

**U.S. POSTAL SERVICE, SHAKER HEIGHTS  
POST OFFICE, Cleveland, OH, Employer**

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**Docket No. 20-1659  
Issued: July 8, 2021**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 24, 2020 appellant, through counsel, filed a timely appeal from an August 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish right upper extremity conditions causally related to the accepted July 13, 2019 employment incident.

## **FACTUAL HISTORY**

On July 15, 2019 appellant, then a 41-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 13, 2019 she injured her right wrist, upper arm, elbow, and shoulder when she tripped over a tree stump and fell backwards when she attempted to back away from a dog running towards her while in the performance of duty. She stopped work on July 15, 2019.

In an accompanying July 13, 2019 statement, appellant alleged that on that date she had just delivered mail when a dog ran toward her. She noted that the dog kept barking and running at her, causing her to back up. Appellant indicated that she sprayed the dog in the mouth, eyes, and nose with her mace. She then fell backward after tripping over a tree stump in the curb side grass.

A July 13, 2019 medical note from Suzan Safi, a physician assistant, revealed that appellant was seen that day and excused her from work until she was cleared by her primary care doctor.

In a July 17, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary and also provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a July 13, 2019 state workers' compensation first report of injury, appellant again reported that a dog attacked her causing her to trip over a tree stump and fell backward.

Dr. Erin Rocchio, an internist, noted in a July 16, 2019 medical report, that appellant fell backward at work while trying to avoid a dog from attacking her. She indicated that an x-ray revealed no fracture. Dr. Rocchio diagnosed right trapezius muscle strain, right de Quervain's tenosynovitis, and migraine without aura. She recommended physical therapy treatment.

In an August 8, 2019 medical report, Dr. Rocchio noted that appellant presented for a follow up of her work-related injury. She conducted a physical examination and diagnosed right trapezius muscle sprain.

By decision dated August 21, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed conditions and the accepted July 13, 2019 employment incident.

In a July 16, 2019 duty status report (Form CA-17), Dr. Rocchio again noted that appellant was attacked by a dog and fell backward while in the performance of duty. She diagnosed right trapezius muscle strain and right de Quervain's tenosynovitis.

In an August 8, 2019 letter, Dr. Rocchio indicated that appellant could return to work on September 1, 2019 with restrictions.

On August 26, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearing and Review. A telephonic hearing was held on December 2, 2019. Counsel indicated that appellant had filed a separate claim for the same date, but clarified that they were two separate incidents. Appellant explained that on July 13, 2019 the dog did not bite her, and that her injury was a combination of impact and twist from her fall. She asserted that she primarily hit her shoulder blade when she fell.

By decision dated January 27, 2020, OWCP's hearing representative affirmed the August 21, 2019 decision.

On July 21, 2020 appellant, through counsel, requested reconsideration.

In a March 19, 2020 report, Dr. Adam D. Borland, a licensed clinical psychologist, indicated that appellant presented with anxiety and stress following her workplace trauma. He noted that she suffered from back and shoulder pain. Dr. Borland also found that appellant suffered from anxiety, panic attacks, and flashbacks, especially in the presence of large dogs. He diagnosed anxiety disorder, post-traumatic stress disorder, panic attacks, and situational stress.

By decision dated August 19, 2020, OWCP affirmed the January 27, 2020 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

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<sup>3</sup> *Supra* note 2.

<sup>4</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish right upper extremity conditions causally related to the accepted July 13, 2019 employment incident.

In medical reports dated July 16 and August 8, 2019, and a Form CA-17 dated July 16, 2019, Dr. Rocchio noted that appellant fell backward on her right wrist and arm at work while trying to avoid a dog from attacking her. She diagnosed right trapezius muscle strain/sprain and right de Quervain's tenosynovitis. In an August 8, 2019 letter, Dr. Rocchio indicated that appellant could return to work on September 1, 2019 with restrictions. However, she did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.<sup>10</sup> Therefore, these reports are insufficient to establish appellant's claim.

In a March 19, 2020 report, Dr. Borland indicated that appellant suffered from physical and mental conditions related to the accepted July 13, 2019 employment incident in which she was attacked by a dog and fell backward at work. He diagnosed anxiety disorder, post-traumatic stress disorder, panic attacks, and situational stress. Additionally, no medical rationale accompanied Dr. Borland's affirmative medical opinion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition has an employment-related cause.<sup>11</sup> As such, Dr. Borland's report is of limited probative value and insufficient to establish appellant's claim.

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<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>10</sup> *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>11</sup> *See J.S.*, Docket No. 20-0617 (issued May 27, 2021); *T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

Lastly, the record contains a July 13, 2019 report from Ms. Safi, a physician assistant. The Board has held, however, that medical reports signed solely by a physician assistant are of no probative value as physician assistants are not considered physicians as defined under FECA.<sup>12</sup> As such, this evidence is of no probative value and is insufficient to establish appellant's claim.

As the record does not contain rationalized medical evidence sufficient to establish causal relationship between the accepted July 13, 2019 employment incident and her diagnosed right upper extremity conditions, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish right upper extremity conditions causally related to the accepted July 13, 2019 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the August 19, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 8, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA). *See also M.W.*, Docket No. 19-1667 (issued June 29, 2020) (physician assistant).